

Senate File 368

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 1169)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to advanced telecommunications services,
2 including rate provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 Section 1. Section 476.1D, subsection 1, Code 2003, is
1 2 amended to read as follows:
1 3 1. Except as provided in this section, the jurisdiction of
1 4 the board as to the regulation of communications services is
1 5 not applicable to a service or facility that is provided or is
1 6 proposed to be provided by a telephone utility that is or
1 7 becomes subject to effective competition, as determined by the
1 8 board. In determining whether a service or facility is or
1 9 becomes subject to effective competition, the board shall
1 10 consider, among other factors, whether a comparable service or
1 11 facility is available from a supplier other than the telephone
1 12 utility in the geographic market being considered by the board
1 13 and whether market forces in that market are sufficient to
1 14 assure just and reasonable rates without regulation.

1 15 Sec. 2. Section 476.6, subsection 1, Code 2003, is amended
1 16 to read as follows:

1 17 1. FILING WITH BOARD. A public utility subject to rate
1 18 regulation shall not make effective a new or changed rate,
1 19 charge, schedule or regulation until the rate, charge,
1 20 schedule, or regulation has been approved by the board, except
1 21 as provided in subsections 11 and 13.

~~1 22 A subscriber of a telephone exchange or service, who is
1 23 declared to be legally blind under section 422.12, subsection
1 24 1, paragraph "e", is exempt from any charges for telephone
1 25 directory assistance that may be approved by the board.~~

1 26 Sec. 3. Section 476.6, subsections 2 through 4, Code 2003,
1 27 are amended by striking the subsections.

1 28 Sec. 4. Section 476.51, Code 2003, is amended to read as
1 29 follows:

1 30 476.51 CIVIL PENALTY.

1 31 1. A public utility which, after written notice by the
1 32 board of a specific violation, violates the same provision of
1 33 this chapter, the same rule adopted by the board, or the same
1 34 provision of an order lawfully issued by the board, is subject
1 35 to a civil penalty, which may be levied by the board, of not
2 1 less than one hundred dollars nor more than two thousand five
2 2 hundred dollars per violation.

2 3 2. A public utility which willfully, after written notice
2 4 by the board of a specific violation, violates the same
2 5 provision of this chapter, the same rule adopted by the board,
2 6 or the same provision of an order lawfully issued by the
2 7 board, is subject to a civil penalty, which may be levied by
2 8 the board, of not less than one thousand dollars nor more than
2 9 ten thousand dollars per violation. For the purposes of this
2 10 section, "willful" means knowing and deliberate, with a
2 11 specific intent to violate.

2 12 3. Each violation is a separate offense. In the case of a
2 13 continuing violation, each day a violation continues, after
2 14 the time specified for compliance in the written notice by the
2 15 board, is a separate and distinct offense. Any civil penalty
2 16 may be compromised by the board. In determining the amount of
2 17 the penalty, or the amount agreed upon in a compromise, the
2 18 board may consider the appropriateness of the penalty in
2 19 relation to the size of the public utility, the gravity of the
2 20 violation, and the good faith of the public utility in
2 21 attempting to achieve compliance following notification of a
2 22 violation, and any other relevant factors.

2 23 4. The written notice given by the board to a public
2 24 utility under this section shall specify an appropriate time
2 25 for compliance.

2 26 5. Civil penalties collected pursuant to this section from
2 27 utilities providing water, electric, or gas service shall be
2 28 forwarded by the executive secretary of the board to the
2 29 treasurer of state to be credited to the general fund of the
2 30 state and to be used only for the low income home energy
2 31 assistance program and the weatherization assistance program
2 32 administered by the division of community action agencies of
2 33 the department of human rights. Civil penalties collected
2 34 pursuant to this section from utilities providing

2 35 telecommunications service shall be forwarded to the treasurer
3 1 of state to be credited to the general fund of the state to be
3 2 used only for consumer education programs administered by the
3 3 board. Penalties paid by a rate-regulated public utility

3 4 pursuant to this section shall be excluded from the utility's
3 5 costs when determining the utility's revenue requirement, and
3 6 shall not be included either directly or indirectly in the
3 7 utility's rates or charges to customers.

3 8 Sec. 5. Section 476.97, subsection 3, paragraph a,
3 9 subparagraph (5), Code 2003, is amended to read as follows:

3 10 (5) The plan shall provide for both increases and
3 11 decreases in the prices for basic communications services
3 12 reflecting annual changes in inflation ~~and productivity~~.
3 13 ~~Prior to January 1, 2000, Initially,~~ the board shall use the
3 14 gross domestic product price index, as published by the
3 15 federal government, for an inflation measure, ~~and two and six-~~
3 16 ~~tenths percentage points for a productivity measure. On or~~
3 17 ~~after January 1, 2000, the~~ The board by rule may adopt a more
3 18 current measures measure of inflation ~~and productivity~~. Any
3 19 plan in effect as of July 1, 2003, that contains a
3 20 productivity factor shall strike the productivity factor on a
3 21 prospective basis.

3 22 Sec. 6. Section 476.97, Code 2003, is amended by adding
3 23 the following new subsection:

3 24 NEW SUBSECTION. 12. a. The Iowa broadband initiative is
3 25 created to provide access to advanced telecommunications
3 26 services to all customers in all exchanges served by rate=
3 27 regulated local exchange carriers where advanced
3 28 telecommunications services are not already available at
3 29 affordable rates, to the extent consistent with technological
3 30 limitations and the public interest as determined by the
3 31 board. The general assembly specifically finds that
3 32 regulatory flexibility is appropriate when fostering economic
3 33 development through the increased availability of advanced
3 34 telecommunications services.

3 35 b. For purposes of this section, "advanced
4 1 telecommunications services" is defined as infrastructure
4 2 capable of delivering a data transmission speed of at least
4 3 two hundred kilobits per second in each direction.
4 4 c. Any rate-regulated local exchange carrier may implement
4 5 a single increase in monthly rates for residential or business
4 6 dial tone access service lines by an amount not to exceed two
4 7 dollars per month. The increase shall be included in the
4 8 customer's bill as an unidentified part of the overall rate
4 9 for service. The revenue from this increase shall be used to
4 10 provide advanced telecommunications services in each of the
4 11 carrier's local exchange central office wire centers where
4 12 advanced telecommunications services are not currently
4 13 available at affordable rates in all or a substantial part of
4 14 the exchange, subject to the requirements in subparagraphs (1)
4 15 through (7). In addition, any increase or decrease required
4 16 by an approved price regulation plan that, as of July 1, 2003,
4 17 has been deferred pursuant to subsection 3, paragraph "a",
4 18 subparagraph (6), shall not be implemented and the amount of
4 19 any deferral shall also be used to provide advanced
4 20 telecommunications services, subject to the following
4 21 requirements:

4 22 (1) Any carrier electing to participate in the Iowa
4 23 broadband initiative shall file for the board's review and
4 24 approval a plan for using the revenue resulting from the rate
4 25 increase. In reviewing the plan, the board shall consider
4 26 investments and expenditures by the carrier that will best
4 27 serve the public interest as described in this subsection,
4 28 including upgrading the existing telecommunications
4 29 infrastructure to permit improved data services for customers
4 30 who cannot be offered advanced telecommunications services
4 31 because of their geographical location. The board shall adopt
4 32 rules to implement its review process, including rules that
4 33 specify the initial plan filing requirements, further define

4 34 the public interest, and identify some of the factors the
4 35 board will consider in reviewing plans.

5 1 (2) The carrier shall use the revenue resulting from the
5 2 rate increase to implement its approved plan. Whenever the
5 3 board is of the opinion that a carrier is not complying with
5 4 its approved plan, the board may commence an action in the
5 5 district court for any county in which such violation is
5 6 alleged to have occurred to have such violation stopped and
5 7 prevented by injunction, mandamus, or other appropriate
5 8 remedy. The board may also, after notice and opportunity for
5 9 hearing, require that the carrier refund any revenue resulting
5 10 from the rate increase that has not been used to implement its
5 11 approved plan. The board may also enforce the approved plan
5 12 with civil penalties, pursuant to section 476.51.

5 13 (3) The carrier shall file annual reports with the board
5 14 detailing its progress toward completion of its approved plan.

5 15 (4) The carrier, the board, or any other interested person
5 16 may propose modifications to a carrier's plan at any time.

5 17 (5) By choosing to participate in the Iowa broadband
5 18 initiative, the participating carrier agrees to make available
5 19 to other carriers, on both a wholesale and an unbundled basis,
5 20 the services and facilities that result from implementation of
5 21 the participating carrier's plan. The wholesale rates and
5 22 unbundled rates shall be set by the board, which shall
5 23 consider, among other factors, the extent to which the service
5 24 or facility was financed by the revenues generated by the rate
5 25 increase allowed under this paragraph "c".

5 26 (6) Upon completion of its initial Iowa broadband
5 27 initiative plan, a carrier shall do one or more of the
5 28 following:

5 29 (a) File a plan for board review and approval for
5 30 continued use of the revenue resulting from the rate increase
5 31 for further deployment of advanced services.

5 32 (b) File a rate of return rate proceeding pursuant to
5 33 section 476.6 to determine new rates.

5 34 (c) File proposed tariffs for board review and approval to
5 35 reduce the monthly rates that were increased under this
6 1 subsection by an amount equal to the increase.

6 2 (7) A carrier choosing to participate in the Iowa
6 3 broadband initiative shall also apply a credit, in an amount
6 4 equal to the amount of the residential service increase, to
6 5 the monthly local exchange service rate for qualified
6 6 applicants for low-income lifeline assistance programs. This
6 7 credit shall continue for as long as the retail rate increase
6 8 is in effect.

6 9 Sec. 7. NEW SECTION. 476.105 SEVERABILITY.

6 10 If any provision of this chapter or its application to any
6 11 person or circumstance is held invalid or otherwise rendered
6 12 ineffective by any entity, the invalidity or ineffectiveness
6 13 shall not affect other provisions or applications of this
6 14 chapter that can be given effect without the invalid or
6 15 ineffective provision or application, and to this end the
6 16 provisions of this chapter are severable.

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